



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

OCT - 7 2004

Mr. Alton C. Boozer, Chief
Bureau of Water
South Carolina Department of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201-1708

Dear Mr. Boozer:

The Environmental Protection Agency (EPA) has reviewed the revisions to Regulation 61-68, "Water Classifications and Standards", of the South Carolina water quality standards. These revisions were duly promulgated by the Board of Health and Environmental Control and became effective for purposes of State law upon publication in the State Register on June 25, 2004. These revisions included the adoption of updated human health criteria; enterococci criteria for the protection of recreational uses in saltwaters; inclusion of a provision to issue variances; addition of *Daphnia ambigua* as an alternative test species for whole effluent toxicity testing; adoption of permit implementation language for the enterococci criteria; and other editorial revisions.

These revisions were submitted for EPA review by letter dated June 29, 2004. The State's request for review included certification by the Department's General Counsel that the revisions were duly adopted pursuant to State law.

In accordance with Section 303(c) of the Clean Water Act (CWA) and 40 Code of Federal Regulations (CFR) Part 131, I am hereby approving, with one exception noted below, these revisions to the State water quality standards. This approval is based, in part, on discussions with the State on the implementation of the variance language located at R. 61-68.E.7.f. and the understanding by EPA that this language will be implemented consistent with 40 CFR 131.10(g)(6). EPA will monitor the implementation of all of the approved revisions to ensure consistency with the CWA and the appropriate implementing regulations.

The above exception is for a specific revision to Section E.14.c.9 of the Regulation involving the delay of implementation of the enterococci criteria for permit limits until EPA publishes applicable test methods in 40 CFR 136. Title 40 CFR 131.2 provides, in part, that a state's standards "...serve the dual purposes of establishing the water quality goals for a specific water body and serve as the regulatory basis for the establishment of water-quality-based treatment controls and strategies...". The effect of this sentence added by the State, however, is to render the adopted criteria inapplicable for CWA purposes until such time as the EPA methods are published. Accordingly, the State does not have effective criteria as required by Section 303(i) of the CWA and 40 CFR 131.11. Based on this rationale and under the

authority of Section 303(c) of the CWA and 40 CFR Part 131, I am disapproving the following from R. 61-68.E.14.c.9: "Implementation of the enterococci standards in NPDES permit effluent limitations shall be subsequent to EPA publishing the applicable test methods in 40 CFR 136." Since new or revised standards are not effective for CWA purposes until approved by EPA, disapproval of this sentence, along with approval of the remaining changes related to enterococci criteria, results in the criteria being immediately applicable for all purposes under the Clean Water Act and its implementing regulations. For purposes of clarity, however, South Carolina may wish to consider removal of this sentence from the regulation at the earliest opportunity.

This same sentence also appears in c.8 in the hardcopy version of the standards that EPA received. However, the State has informed EPA in a letter dated October 6, 2004, that the revisions as adopted by the State, as acted on by the Legislature, reviewed by State Counsel, and published in the State Register do not include this wording in c.8., but only in c.9. EPA understands that this was the only difference between the version received in hardcopy and the actual adopted revision as described above. Based on this letter, no action is necessary on R.61-68.E.14.c.8 since it is simply an error.

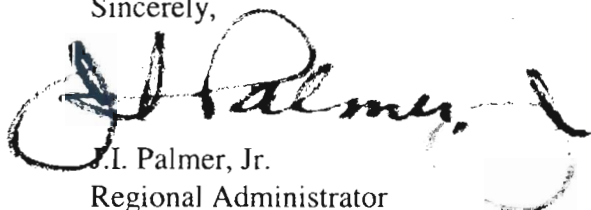
There are alternatives available to the State in the absence of final methods published pursuant to 40 CFR 136. Title 40 CFR 122.41(j)(4) states, "Monitoring results must be conducted according to test procedures approved under 40 CFR part 136...unless other test procedures have been specified in the permit." Title 40 CFR 136.3(c) states:

Under certain circumstances the Regional Administrator or the Director in the Region or State where the discharge will occur may determine for a particular discharge that additional parameters or pollutants must be reported. Under such circumstances, additional test procedures for analysis of pollutants may be specified by the Regional Administrator, or the Director upon the recommendation of the Director of the Environmental Monitoring Systems Laboratory - Cincinnati.

Therefore, the State has an acceptable recourse to include permit limits with an alternative method pursuant to 40 CFR 136.3(c) and consistent with 122.41(j)(4). EPA Region 4 is prepared to assist the State in determining the appropriate test methods in coordination with the Office of Research and Development. Further, based on this action, the State is now in full compliance with CWA Section 303(i).

Should you have any questions related to these actions, please contact Jim Giattina, Director, Water Management Division, at 404-562-9470.

Sincerely,



J.I. Palmer, Jr.
Regional Administrator